April 1, 2005

D.T.E. 05-SL-1

Complaint filed by Charles H. Dunlap, pursuant to G.L. c. 93, §§ 108 et seq., with the Department of Telecommunications and Energy claiming that his long-distance service was switched to MCI, Inc. without authorization.

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## I. INTRODUCTION

On November 16, 2004, Charles H. Dunlap ("Complainant"), pursuant to G.L. c. 93, §§ 108 et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") alleging that his long-distance service was switched from AT&T Communications of New England, Inc. ("AT&T") to MCI, Inc. ("MCI") without authorization.[1] On January 25, 2005, the Department received from MCI a Motion to Dismiss ("MCI Motion to Dismiss") requesting that MCI be dismissed as a party to this proceeding and seeking to substitute Verizon-Massachusetts ("Verizon"), the Complainant's local exchange carrier, as a party. On January 31, 2005, the Department received Verizon's response to MCI's Motion, consisting of an objection to MCI Motion to Dismiss and a Motion to Dismiss the Complaint ("Verizon Motion to Dismiss").[2] On February 1, 2005, the Department joined Verizon as a party to this proceeding and provided Verizon with notice of the scheduled evidentiary hearing. On March 3, 2005, pursuant to notice duly issued, the Department conducted an evidentiary hearing.[3] The record consists of one exhibit from the Complainant, one MCI exhibit, one Verizon exhibit, 24 Department exhibits, and three responses to record requests issued by the Department.

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1 Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer's primary interexchange carrier ("IXC") or local exchange carrier ("LEC") is known as "slamming."

2 Given the Department's decision on the merits discussed below, both MCI's and Verizon's Motions to Dismiss are deemed moot.

3 The hearing was originally scheduled for February 10, 2005, but was rescheduled with assent of all parties to March 3, 2005.

## II. POSITIONS OF THE PARTIES

### A. Complainant

The Complainant asserts that AT&T has been his chosen long-distance provider since at least 1980 (Tr. at 20, 22). The Complainant states that he did not sign a letter of agency ("LOA") or engage in a third party verification ("TPV") authorizing the switch of carriers from AT&T to MCI (id. at 22). The Complainant indicates that he first became aware of a problem with his long-distance provider when he and his wife tried to complete long-distance calls beginning on November 12, 2004, and they received a recorded message indicating that access to their long-distance service was blocked (id. at 14-15). After inquiries to Verizon and AT&T, the Complainant learned that MCI had been assigned as his primary interexchange carrier ("PIC") (see id. at 15).[4] The Complainant asserts that on November 15, 2004, he received a letter from MCI indicating that MCI had placed a block on his telephone line due to the high volume of long-distance calls he was making (id.; Exh. DTE-4).[5]

The Complainant states that he received bills from Verizon dated November 26, 2004, and December 26, 2004, which included charges for long-distance calls carried by MCI totaling $446.05 for service from October 17, 2004, through November 11, 2004 (Tr. at 17-18; Exhs. DTE-6, DTE-21). The Complainant states that he did not pay the long-

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4 A primary or presubscribed interexchange carrier ("PIC") is the long-distance company to which long-distance traffic from a given location is automatically routed by a LEC. When a consumer switches long-distance carriers, it is referred to as a PIC change.

5 According to MCI, it will block an individual's access to MCI's network when it notes an unusual calling pattern and/or usage higher than the average long-distance consumer (RR-DTE-3).

distance charges (Tr. at 29). The Complainant asserts that he also received a Verizon statement dated January 10, 2005, indicating that if Verizon did not receive payment by January 24, 2005, the Complainant's service would be disconnected because his account was past due (Tr. at 19; Exh. DTE-21). After contacting Verizon, the Complainant states that he then received an adjustment for the total amount of $446.05 on his Verizon bill dated January 26, 2005 (Tr. at 30-31; Exh. CONS-1). The Complainant states that he ultimately restored his long-distance telephone service provider to AT&T, his chosen PIC, on November 16, 2004, after placing numerous calls to AT&T, MCI, and Verizon (see Tr. at 16-17). The Complainant indicates that he contacted the Massachusetts Attorney General's Office, the Federal Communications Commission ("FCC"), and the Department to determine what action to take, which resulted in his filing a formal slamming complaint with the Department's Consumer Division (id. at 24-25).

B. MCI

MCI asserts that it did not solicit by calling, marketing to, or trying to sell long-distance service to the Complainant, therefore, no account was established for the Complainant's telephone number which would result in MCI billing the Complainant directly (Exh. MCI-1; Tr. at 34-36). MCI indicates that when it sells long-distance service and a PIC change is submitted to the LEC, an account is established and the customer would receive bills directly from MCI (Tr. at 34). MCI indicates that although calls placed from the Complainant's line were carried on MCI's network (id. at 34-36; Exh. MCI-1), this occurred as a result of an inadvertent error not caused by MCI (Tr. at 36). As a result of this inadvertent error placing the Complainant's long-distance calls on the MCI network, MCI contends that the Complainant was billed "casually" or "randomly" (Exh. MCI-1).[6] MCI contends that, as the Complainant's LEC, Verizon is responsible for updating and maintaining the database which identifies the Complainant's chosen PIC, and is responsible for billing long-distance charges for carriers other than the Complainant's chosen PIC (id.). MCI asserts that the Complainant's access to long-distance calls placed on the MCI network was blocked as of November 13, 2004, due to unusually high volumes of usage (Tr. at 42-43; Exh. DTE-4).

C. Verizon

Verizon asserts that the change from the Complainant's chosen PIC, AT&T, to MCI, was due to an inadvertent error on Verizon's part and does not constitute slamming under Massachusetts law (Tr. at 46-47).[7] Verizon makes clear that the inadvertent change of the Complainant's PIC occurred within Verizon's system (id. at 50-51). In fact, Verizon asserts that a review of the Complainant's records revealed that no PIC change order had been submitted to Verizon by MCI (id. at 46, 65). After it was contacted by the Complainant about the change, Verizon indicates that it discovered that a change of the Complainant's long-distance provider from AT&T to MCI had occurred, and it immediately changed its database to reflect AT&T as the Complainant's PIC (id. at 46-47, 50-51, 64). Verizon states that it issued

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6 "Casual billing" is a default rate applied by an IXC to an end-user when the end-user does not have an account with the IXC or has not signed up for a calling plan.

7 An inadvertent LEC error is not slamming under Massachusetts law, argues Verizon, because no PIC change order is involved and because the LEC does not benefit from the carrier change (Exh. VZ-1, at 3).

a credit, in the amount of $446.05 for all charges resulting from the Complainant's long-distance calls being carried by MCI, to the Complainant's account (id. at 69; Exh. CONS-1).

## III. STANDARD OF REVIEW

Pursuant to 47 U.S.C. § 258(a), "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [FCC] may prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services." Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary IXC or LEC shall be considered to be authorized only if the IXC or LEC that initiated the change provides confirmation that the customer authorized the change either through a signed LOA or oral confirmation of authorization through a TPV obtained by a company registered with the Department to provide TPV services in the Commonwealth. Pursuant to G.L. c. 93, § 110(i), upon receipt of a slamming complaint, the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did or did not authorize the carrier change.

In addition to the Massachusetts slamming laws set forth above, the FCC implemented slamming liability rules in May 2000. See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, First Order on Reconsideration, FCC 00-135 (rel. May 3, 2000) ("First Order on

Reconsideration"). In accordance with those rules, consumers do not have to pay for service for up to 30 days after being slammed; any charges beyond 30 days must be paid but at the rates charged by the company the consumer requested. First Order on Reconsideration at ¶¶ 7-14, 39; 47 C.F.R. § 64.1160(b). If an unauthorized switch is found to have occurred and the consumer has paid the bill, the company responsible for the unauthorized switch must pay the authorized company 150 percent of the charges it received from the consumer, and the authorized company will reimburse the consumer 50 percent of the charges the consumer paid to the slamming company. First Order on Reconsideration at ¶¶ 15-21, 42; 47 C.F.R. § 64.1170(b), (c). According to the FCC, state commissions should have primary responsibility for administering the FCC's slamming liability rules. First Order on Reconsideration at ¶¶ 22-28, 33-37, 52, 84. On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules. See Letter to Magalie Roman Salas, Secretary, Federal Communications Commission (November 3, 2000).

## IV. ANALYSIS AND FINDINGS

As an initial matter, we conclude from evidence and information provided by MCI and Verizon that MCI did not initiate the events that resulted in the Complainant receiving long-distance service from MCI (Exhs. MCI-1, VZ-1; Tr. at 64). At the evidentiary hearing, Verizon made clear that the change in carriers was due to a mistake or inadvertent error on Verizon's part (Tr. at 50-51).

The Massachusetts anti-slamming provisions are broad. 220 C.M.R. § 13.02 defines "slamming" as "any unauthorized change to a customer's primary IXC or LEC" (emphasis added). In addition, G.L. c. 93, § 109 states that "a change in a customer's primary IXC or LEC shall be considered to have been authorized only if the IXC or LEC that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or [TPV]" (emphasis added). Although Verizon argues that its erroneous change of the Complainant's PIC does not constitute slamming under Massachusetts law because the change was not initiated by a PIC change order submitted by the "new" IXC and because Verizon did not benefit from the carrier change (see Exh. VZ-1, at 3; Tr. at 46-47), we do not find any such limitation within G.L. c. 93, §§ 108 et seq. or 220 C.M.R. §§ 13.01 et seq. We conclude that the unauthorized change in service resulted from Verizon action, whether inadvertent or not, and that the change was unauthorized by the Complainant.

This conclusion is also consistent with federal anti-slamming law. The FCC has made clear that when a LEC assigns a consumer to an IXC without authorization through a LEC's mistake, the result is an unauthorized carrier change and the executing carrier (in this case, Verizon) is liable for failure to comply with the FCC rules and may be held responsible to remedy an unauthorized carrier change. See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, at ¶¶ 85-88 (rel. March 17, 2003) ("Third Order on Reconsideration"); 47 C.F.R. §§ 64.1100(b)-(e), 64.1120(a), 64.1160(g).

Therefore, we find that Verizon's actions resulted in an unauthorized change in the Complainant's long-distance telecommunications service from AT&T to MCI. Because the Complainant did not pay the charges associated with the unauthorized change, the Complainant is entitled, consistent with FCC rules, to removal of the unauthorized charges and Verizon must also switch the Complainant to his desired carrier at no cost to the Complainant. Third Order on Reconsideration at ¶ 87; 47 C.F.R. § 64.1160(g). The evidence warrants our finding that Verizon has waived or adjusted all charges to the Complainant resulting from the unauthorized switch in service (Exh. CONS-1; Tr. at 69), and that Verizon has restored the Complainant's long-distance service to his chosen PIC, AT&T (Tr. at 46-47). No further remedy, therefore, is required to effect a resolution of the Complaint.

## V. ORDER

Accordingly, after due notice, hearing, and consideration, the Department finds that Verizon-Massachusetts, having caused the switch in Charles H. Dunlap's long-distance telephone service provider without authorization and in violation of the provisions of G.L. c. 93, § 109(a), shall comply with the directives contained in this Order.

By Order of the Department,

/s/
Paul G. Afonso, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Judith F. Judson, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.